

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 823 Access to Dwelling Units

**SPONSOR(S):** Safety & Security Council; Kravitz

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1530

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) <u>Committee on Constitution &amp; Civil Law</u>	<u>9 Y, 0 N</u>	<u>Thomas</u>	<u>Birtman</u>
2) <u>Safety &amp; Security Council</u>	<u>16 Y, 0 N, As CS</u>	<u>Thomas/Davis</u>	<u>Havlicak</u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
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**SUMMARY ANALYSIS**

The bill amends the Florida Residential Landlord and Tenant Act to require all landlords to maintain a written record that includes the names of all employees of the landlord who have access to a dwelling unit and the dates and times that any employee of the landlord will enter a dwelling unit. The written record is subject to inspection by a tenant upon the tenant's request.

The bill defines the term "employee" as "a person who receives compensation from, and is under the supervision and control of, a landlord who regularly deducts the F.I.C.A. and withholding tax and provides workers' compensation, all as prescribed by law."

The bill exempts "homes for the aged" from the record-keeping requirements of the bill to the extent that such facilities provide care and services for the aged.

It does not appear that the bill will have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2008.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government** - the bill increases the responsibilities and obligations of landlords.

**Maintain Public Security** - the bill affects landlord participation in providing for physical security of tenants.

#### B. EFFECT OF PROPOSED CHANGES:

##### Florida Landlord - Tenant Law

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs the relationship between landlords and tenants in a residential lease agreement.<sup>1</sup> A rental agreement specifies the terms and conditions of a tenant's occupation in a dwelling unit for a specific period of time.<sup>2</sup> The provisions of the Act specifically address the payment of rent,<sup>3</sup> duration of leases,<sup>4</sup> security deposits,<sup>5</sup> maintenance of the dwelling and premises,<sup>6</sup> termination of rental agreements,<sup>7</sup> liquidated damages for failure to provide notice before vacating,<sup>8</sup> penalty for holding over,<sup>9</sup> and a landlord's remedies for the breach of a lease.<sup>10</sup>

##### Landlord's Access to Dwelling Unit

A tenant may not unreasonably withhold consent to the landlord to enter the dwelling unit in order to inspect the premises, make repairs, or improvements; supply agreed services; or show the unit to prospective purchasers, tenants, workers, or contractors.<sup>11</sup> The landlord may enter the unit at any time for the protection or preservation of the premises or upon reasonable notice<sup>12</sup> and at a reasonable time for the purpose of repair of the premises.<sup>13</sup> The landlord is, however, bound by the provisions of the lease for reentry.<sup>14</sup> The landlord may not abuse the right of access nor use it to harass the tenant.<sup>15</sup> Absent abandonment or voluntary relinquishment, the landlord's right to enter prior to taking possession must be pursuant to the lease or be established by legal process.<sup>16</sup>

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<sup>1</sup> Part II of ch. 83, F.S. This part applies to the rental of a "dwelling unit" which is defined as a structure or part of a structure rented for use as a home, residence or sleeping place. It also includes mobile homes rented by a tenant. Section 83.43, F.S.

<sup>2</sup> Section 83.43(7), F.S., provides that: "Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

<sup>3</sup> Section 83.46, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 83.49, F.S.

<sup>6</sup> Sections 83.51 and 83.52, F.S.

<sup>7</sup> Section 83.56, F.S.

<sup>8</sup> Section 83.58, F.S.

<sup>9</sup> Section 83.575, F.S.

<sup>10</sup> Section 83.595, F.S.

<sup>11</sup> Section 83.53(1), F.S.

<sup>12</sup> "Reasonable notice" for the purpose of repair is notice given at least 12 hours prior to the entry, and reasonable time for the purpose of repair is between the hours of 7:30 a.m. and 8:00 p.m. Section 83.53(2), F.S.

<sup>13</sup> Section 83.53(2), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Section 83.53(3), F.S.

<sup>16</sup> *Van Hoose v. Robbins*, 165 So.2d 209 (Fla. 2d DCA 1964).

## Landlord's Duty to Protect Tenants From Third Parties

While a landlord has a duty to exercise reasonable care to maintain a leased premises in a reasonably safe condition, generally, there is no duty to protect a tenant from criminal attacks by third persons.<sup>17</sup> In order to acquire such a duty, a tenant must allege and prove that the landlord had actual or constructive knowledge of prior similar acts committed on invitees on the premises.<sup>18</sup>

## Negligent Hiring by Landlords

In Florida, a landlord may be liable for its negligence in hiring an employee that may be dangerous to others.<sup>19</sup> An employer is liable for negligent hiring when the employer was in some way responsible for bringing a third person into contact with an employee whom the employer knew or should have known was predisposed to commit a wrong if given the opportunity.<sup>20</sup> For example, if an employer provides an employee with the "indicia of authority" to enter into the living quarters of others, the employer has the responsibility of first making some inquiry with respect to whether it is safe to facilitate the employee's access.<sup>21</sup>

In civil actions premised upon the death or injury of a third person as a result of intentional conduct of an employee, the employer is presumed not to have been negligent in hiring the employee, if prior to hiring, the employer conducted a background check on the employee which revealed no information that would cause an employer to conclude that the employee was unfit for work.<sup>22</sup> Pursuant to statute, the background investigation must include:

- A criminal background check obtained from the Department of Law Enforcement (FDLE);<sup>23</sup>
- Reasonable efforts to contact references and former employers;
- A job application form that includes questions requesting detailed information regarding previous criminal convictions;
- A written authorization allowing a check of the applicant's driver's license record if relevant to the work to be performed; or
- An interview of the prospective employee.<sup>24</sup>

If the employer elects not to conduct an investigation prior to hiring, there is no presumption that the employer failed to use reasonable care in hiring an employee.<sup>25</sup>

## Civil Liability

Florida law provides that violations of statutes or ordinances, other than those imposing strict liability, may constitute negligence per se or evidence of negligence.<sup>26</sup> For a violation of statute to constitute

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<sup>17</sup> See *Paterson v. Deeb*, 472 So.2d 1210 (Fla. 1st DCA 1985); *Menendez v. The Palms West Condominium Ass'n, Inc.*, 736 So.2d 58 (Fla. 1st DCA 1999).

<sup>18</sup> *Id.*

<sup>19</sup> *Phillips v. Edwin P. Stimpson Co.*, 588 So.2d 1071 (Fla. 4th DCA 1991).

<sup>20</sup> *Brown v. Zaveri*, 164 F. Supp. 2d 1354 (S.D. Fla. 2001).

<sup>21</sup> *Williams v. Feather Sound, Inc.*, 386 So.2d 1238 (Fla. 2d DCA 1980); *Tallahassee Furniture Co., Inc. v. Harrison*, 583 So.2d 744 (Fla. 1st DCA 1991).

<sup>22</sup> Section 768.096(1), F.S.

<sup>23</sup> The employer must request and obtain from FDLE a check of the information as reported in the Florida Crime Information Center system as of the date of the request. Section 768.096(2), F.S.

<sup>24</sup> Section 768.096(1)(a)-(e), F.S.

<sup>25</sup> Section 768.096(3), F.S.

<sup>26</sup> *Lingle v. Dion*, 776 So.2d 1073 (Fla. 4th DCA 2001).

negligence per se, the injury must be to an individual who is a member of a class the statute was designed to protect, and the injury must be of a type the statute was intended to prevent.<sup>27</sup>

A landlord's duty to protect a tenant can be based on requirements set forth by statute. For example, in *Paterson*, the tenant alleged that the landlord had failed to provide a working lock on the exterior bathroom to her apartment, in violation of s. 83.51, F.S.<sup>28</sup> The tenant was raped in the bathroom by an intruder who might not have been able to gain entry had the room been locked.<sup>29</sup> The court held that, while the landlord in *Paterson* had no general duty to protect the tenant from a criminal attack by a third person, he did have a specific duty to provide the tenant with a working lock.<sup>30</sup> The breach of this duty exposed the landlord to civil liability for negligence.

### **Effect of Proposed Changes**

The bill requires all landlords to maintain a written record that includes the names of all employees of the landlord who have access to the dwelling unit and the dates and times that any employee of the landlord will enter the dwelling unit. This record is to be subject to inspection by a tenant upon the tenant's request.

The bill defines the term "employee" as "a person who receives compensation from, and is under the supervision and control of, a landlord who regularly deducts the F.I.C.A. and withholding tax and provides workers' compensation, all as prescribed by law."

The bill exempts "homes for the aged" from the record-keeping requirements of the bill to the extent that such facilities provide care and services for the aged. The bill provides that the term "homes for the aged" will have the meaning as provided in s. 212.08(7)(i), F.S.<sup>31</sup>

The bill has an effective date of July 1, 2008.

### **C. SECTION DIRECTORY:**

**Section 1:** Amends section s. 83.53, F.S., relating to a landlord's access to a dwelling unit.

**Section 2:** Provides an effective date of July 1, 2008.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state government revenues.

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<sup>27</sup> *deJesus v. Seaborad Coast Line R. Co.*, 281 So.2d 198 (Fla. 1973); *Griffith v. Dep't of Health and Rehabilitative Serv.*, 624 So.2d 813 (Fla. 4th DCA 1993).

<sup>28</sup> *Paterson*, 472 So. 2d at 1213 and 1214.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Section 212.08(7)(i), F.S., provides: "A home for the aged is defined as a facility that is licensed or certified in part or in whole under chapter 400, chapter 429, or chapter 651, or that is financed by a mortgage loan made or insured by the United States Department of Housing and Urban Development under s. 202, s. 202 with a s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of the National Housing Act, or other such similar facility designed and operated primarily for the care of the aged."

2. Expenditures:

The bill does not appear to have any impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires all landlords to maintain a written record that includes the names of all direct employees of the landlord who have access to the dwelling unit and the dates and times that any direct employee of the landlord has entered the dwelling unit.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 19, 2008, the Committee on Constitution & Civil Law recommended a strike-all amendment filed by Rep. Kravitz. The amendment does the following:

- Removes section 2 of the bill, which required criminal history checks of a landlord's employees;
- Defines the term "employee" as a person who receives compensation from, and is under the control of a landlord who regularly deducts FICA, withholding tax, and provides worker's comp;
- Exempts homes for the aged from the record-keeping requirements of the bill;
- Defines "homes for the aged" as it is defined in s. 212.08(7)(i), F.S., to the extent that such facilities provide care and services for the aged.

On April 1, 2008, the Safety & Security Council adopted one amendment to the traveling amendment recommended by the Committee on Constitution and Civil Law, adopted the traveling amendment, and then approved the bill as amended. The amendment to the traveling amendment provides that the written record be created prior to an employee of the landlord entering the dwelling unit. This analysis is drafted to the bill as amended.